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## TEACHING LAW BY CASES.

NO American law school has ever existed in which the course of instruction, however narrow and poor it may have been, failed to include the study, in some sort, of reported cases. But how far should this study be carried?

Here the views of law teachers diverge.

A term has come into use, "case system," which is understood by many as denoting a scheme of legal education in which reported cases are the only sources of written information as to what the law is to which the attention of the student should be turned. I do not think that the term meant this to those who first used it. It does not mean it to them now. But it is received in that sense by many who would be their followers.

Any system of instruction from no other books than compilations of decided cases must necessarily be partial and imperfect unless supplemented by lectures. Nor are lectures of much substantial service to beginners in any branch of study unless they are given so slowly as to allow full notes to be taken, or refer to authorities which are to be, and by the ordinary man will be, afterwards consulted.

But dictation is a mediæval and, except for an occasional rule or maxim, may fairly be said to be an inadmissible mode of instruction; and, if reliance be had on reference to authorities, we come again to the question between case and text book.

Hence it is that the modern case-book is often partly a text-book also. Take the best of them, and how shall we describe it?

It is in substance a series of fragmentary discussions of particular topics, interspersed with fragmentary portions of opinions from reported cases.

The discussions are excellent so far as they go. The fragments of the opinions of the courts are well selected. The torso is there: if the arms and legs — the posture and *motif* — are not, it is only because there was not room for them in the collection.

A statue, to pursue the illustration, is a work of art. Every art has its rules and principles. These have been formulated by men of skill and experience. They are expressed in words. They are also expressed in marble. But the marble speaks all that is in it only to the initiated, the instructed. To gaze upon it brings to

all men pleasure, elevation thought, perhaps a realization of history, an impulse towards the deal in life. But that one may feel thus and think thus does not make him an artist. A study of a thousand statues could not make him even a good stone-cutter. He needs the direction of a master, the light of books, the dry mathematics of anatomy.

No science can be learned purely from particulars. The universals must be studied to discover what the particulars mean and whence they sprang.

Every reported law case is the story of a certain transaction between men and of its consequences. It is dramatic in its nature. One of Shakespeare's historic plays, well acted, makes past times and great men live again for us. But is the theatre a place to learn history in? It may be a place to stamp it in after it has been learned elsewhere, but is not even that to one whose studies have been careless or sporadic.

So, no important case, involving nice discussions, and striking out in new directions, can be of its best service to him who does not know what went before it and what has come after it. Law is a science of relations. The first thing for a law student to strive after is a sense of proportion. What is important and what unimportant? What is settled and what still in dispute? What was the starting-point from which the judge who delivered the opinion set out? What was the turning-point of the case? Is the logic sound, the conclusion certain, the result valuable?

What the ordinary law student desires is to be fitted for the bar. He does not expect to shine as a jurist at five-and-twenty. He does want to be ready to try a suit on a disputed account before a justice of the peace with a fair knowledge of the issues that may be involved. Whether Sir Edward Coke or Lord Mansfield was the first to lay down a certain rule recognized in modern law is of little moment to him. What that rule is he must know, and he must be able to state it in apt terms and on the occasion to which it applies.

Too much pains may be spent in tracing the slow evolution of legal principles through the mazes of the English reports. There is first a suggestion, perhaps, in a chance colloquy between court and counsel, which some barrister who happens to be present happens to jot down. A year or two later, some judge, half remembering what has passed and half forgetting it, adopts a similar line of thought in a charge to the jury, and on a motion for a new trial, it comes up at Westminster. This case goes off on another

point, but the same doctrine is assumed as sound without further inquiry in a subsequent decision, which Blackstone quotes and Kent repeats, and a hundred courts have since applied it.

To study out all this is not without its interest or profit; but there are other things more interesting and more profitable. For the average student, the true starting-point in learning this rule is the text-book which states it best.

What are text-books? They should be, and the few good text-books are, an orderly and succinct statement of the existing law on some particular topic, illustrated by apt examples, and fortified by references to reported cases. No general method of studying law is likely ever to be discovered which is better than that of requiring the scholar to read daily and read with care a chapter or two from such a book, and then to be ready to explain the principles of decision applicable to states of fact slightly variant from those given in the examples put by the author. As supplementary to this, the study of reported cases is of high value. Without it, I believe that it is worth far less.

A text-book on any subject once mastered, or the same ground covered by appropriate lectures, the way is open for advanced study on the same topic by the use of cases pure and simple. In a four years' law course for Americans, a natural and logical order of proceeding would seem to be to devote the first mainly to elementary instruction in the law as it exists, with but a rapid and general view of its historical antecedents; the second largely to text-book study of particular topics, supplemented by reference to cases of present value; the third to studies of more difficult topics, in great part from case-books; and the fourth to those branches that are hardest of all, such as the conflict of laws and comparative jurisprudence, and to special historical research among the older English judicial precedents. This final year would of course not be required as a condition of the bachelor's degree, but reserved for graduate work by earnest scholars.

It has sometimes been suggested that there is some analogy between what has been called the case method of legal education and the modern way in medical schools of relying more on clinical and laboratory work, and in theological schools of sending their men off to preach on Sundays in country parishes, and perhaps placing them during the week in a position to assist some city minister in the work of parochial visitation or recruiting for the Sunday-school.

On the contrary, the equivalent of all this to the law student is

the work in a lawyer's office, which was all that was open to him a hundred years ago. The study of a reported case is *toto celo* a different thing from the drafting of pleadings for a new suit or the preparation for its trial. For this there is a fourth and a fifth year of instruction awaiting almost every law student in his own office or that in which he may enter as a clerk. He will have, save in extremely exceptional cases, if he sets up for himself, not half enough business to do to occupy his time. Hence he can and should put twice the time he otherwise would upon whatever he has.

The law school may do much to make this introduction to the actual work of the profession easy, but it will not be by the use of case-books. It must come from a well-ordered system of moot courts, public or voluntary, and from suitable instruction in forms of conveyancing and rules and usages of local practice.

Books of cases are at once the glory and the reproach of Anglo-American law. They are its glory, because they have treasured up the best-considered thoughts of great judges, expressed on occasions which called out all their powers of reasoning and of statement. They are its reproach, because with one such opinion there are published a hundred which are simply of passing interest, and hardly of that except to the parties and the counsel in the cause.

Blackstone was a judge, a reporter of the decisions of other judges, and a writer of text-books. Which was his best work? The world could better afford to lose half the volumes of the English reports than two books of Blackstone's Commentaries.

In the United States, the rapid multiplication of reports is fast destroying their utility. The tendency of the bench, in all appellate courts, is more and more to recur to fundamental principles, without much reference to what other tribunals may have decided as to their application in particular causes.

It is these fundamental principles, with their more important exceptions and limitations, that the law student needs to apprehend, and so to apprehend as to have them at his service at the moment when he needs them. They must stand in order in the chambers of his mind, ready to come at call. He can never attain this from the study of cases alone.

*Simeon E. Baldwin.*